

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JACKIE C. SHANE,

Plaintiff,

vs.

Civ. No. 01-194 MCA/WWD ACE

BRIAN KILLINGER, in his individual capacity,
and THE CITY OF ALBUQUERQUE,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiff's Motion to Compel Defendant Killinger to Answer Deposition Questions and for Sanctions [docket no. 47] filed May 22, 2002. A reply to the motion was filed June 19, 2002 [docket no. 60]. Both the motion and the reply contain certificates indicating that copies of the pleadings were forwarded to defense counsel. No response to the instant motion has been filed with the Court. In connection with Plaintiff's reply, pages 46 to 49 of the deposition of Brian Killinger are attached as an exhibit. In those pages, counsel for Defendant Killinger instructs Killinger not to answer on two occasions (page 46); objects to the form of a question in connection with the question seeking any other details about the incident between plaintiff and Killinger which may not have been disclosed (page 46-47); counsel repeats the objection again on page 47; and he undertakes to instruct plaintiff's counsel as to how she should practice under the circumstances. Killinger's counsel's conduct in the deposition was obstructive and improper, and it will be discouraged.

WHEREFORE,

IT IS ORDERED that upon reasonable notice from Plaintiff, the deposition of Defendant Killinger be reconvened; and that at the renewed deposition, Defendant Killinger shall answer questions posed to him previously at pages 46 through 48 of his deposition, and such follow-up questions as are reasonably related to the questions at pages 46 through 48 of the deposition which were previously asked and not answered.

IT IS FURTHER ORDERED that counsel for Defendant Killinger share bear the expense of the renewed deposition including providing a copy of that deposition for Plaintiff.

FINALLY, IT IS ORDERED that counsel for Defendant Killinger shall pay to Plaintiff the reasonable attorney fees incurred by Plaintiff in the preparation of the instant motion to compel.


UNITED STATES MAGISTRATE JUDGE